

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**C.W.P. No.7240 of 1989
Date of Decision:29.04.2009**

Madan Pal and others

.....Petitioners

Vs.

State of Punjab and another

.....Respondents

CORAM:- HON'BLE MR. JUSTICE M.M. KUMAR

Present:- Mr. Pawan Kumar Goklaney, Advocate for the petitioners.

Mrs. Sudeepti Sharma, Deputy Advocate General, Punjab.

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

M.M. KUMAR, J.

This order shall dispose of C.W.P. No.9005 of 1989, C.W.P. No.7240 of 1990, C.W.P. No.15102 of 1990 and C.W.P. No.1590 of 1991 as the common question of law and fact have been raised. The petitioners have claimed higher pay/ higher pay scale in lieu of acquisition of higher qualification. Their claim is founded on instructions dated 23.7.1957. Those instructions had granted benefit of higher basic or increments as and when teacher/ masters have acquired higher educational qualifications. Those instructions were withdrawn on 19.2.1979 and the pay-scale were de-linked from the higher qualification. According to the instructions dated 19.2.1979, the pay-scale of teacher/ masters were required to be fixed

according to the post held by them. The litigation between the teachers/master travelled to Hon'ble the Supreme Court and in the case of Gurpal Tuli and others v. State of Punjab and others, AIR 1984 Supreme Court 1901, the action of withdrawing instructions dated 23.7.1957 was upheld and in para 9 and 10, their lordships made following observations:-

- “9. It appears that several teachers filed writ petitions in the High Court claiming revised scales of pay on the ground that they had taken graduate degrees and, therefore, were entitled to the benefit of the grade mentioned against Category 'A' in the Circular letter dated July 23, 1957. In opposition to the writ petitions, the State Government contended that the letter did not contemplate the grant of the grade to all teachers but only to teachers appointed as Masters. The High Court held the teachers entitled to the benefit of the revised grade, whether or not they had been appointed as Masters, because, in the opinion of the High Court, the qualifying criterion was the possession of a graduate degree. The judgment of the High Court was affirmed by this Court in Kirpal Singh Bhatia (AIR 1976 SC 2459) (supra). The State Government found it difficult, having regard to the prevailing burden on its financial resources, to extend the benefit of the Circular letter dated July 23, 1957 to the much wider section of teachers covered in consequence of the Court's judgment. Accordingly, the State Government issued Circular letter No.9/9/79-FR(2)/143 dated February 19, 1979, paragraph

3 of which stated that in order to ensure that “these unintended and large financial implications do not continue arising in future” the whole matter had been reconsidered by the State Government and as a result the Government ordered that henceforth the teachers of the Education Department would not automatically be entitled to placement in the higher scales of pay in terms of paragraph 3 of the Circular letter dated July 23, 1957 by the mere circumstance of their improving or acquiring higher qualifications in the course of their service. The rigour of the restriction was relaxed in some measure. Paragraph 3 said further:-

“However, in order to avoid discrimination between teachers who have already been allowed higher scales of pay on account of having improved their qualifications and those who have not yet been allowed this benefit even though they also possess higher qualifications it is decided that all teachers in the Education Department who have improved their qualifications before the issue of this letter may be allowed the benefit of higher scale of pay on the basis of their qualifications.”

The benefit was not extended to those who were appointed or who had improved their qualifications after the issue of that Circular letter. The teachers continued to agitate for a more generous dispensation. The State

Government then issued Circular letter No.8937-5ED.

1179/2659 dated September 20, 1979, which declared:-

“The implementation of the decision contained in Finance Department circular letter No.9/9/79 FR (2)/143 dated February 19, 1979 to grant higher pay scales to the teachers on the basis of higher qualifications was kept pending for want of clarification on certain points from the Finance Department which has now become available is reproduced below:-

1. The higher scale may be allowed from the date of passing the respective higher examination by the concerned teacher where this has already been done. However, actual payment at enhanced rates should commence from 12-2-79 and the payment of arrears accruing from the date of passing the examination till 13-2-1979 be restricted to the maximum for 38 months.
2. The benefit of the higher scale may be allowed from the date a particular teacher is appointed on regular basis or the date of passing the higher examination, whichever is later, but the payment of arrears as a result of grant of such benefit should be restricted to a period of 38 months only, as already

mentioned above.

3. The teachers placed in the higher scale can only be regularly adjusted when corresponding posts in the higher scale become available; in that case such teachers may continue to enjoy the higher scale as a personal measure till they are adjusted against regular posts as and when the same become available.”

10. It was clarified that the contemplated benefit was confined to the categories of teachers mentioned in the Circular letter No.5058.FR-II-57/5600 dated July 23, 1957.”

In all the writ petitions, the petitioners have acquired post graduate qualification after 19.2.1979. According to the instructions dated 19.2.1979, the teachers of the Education Department would not automatically be entitled to placement in the higher scale of pay in terms of para 3 of the circular letter dated 23.7.1957 by virtue of merely acquiring higher qualification in the course of their service. However, on 20.9.1979, a clarification was issued that those who had acquired the qualification before 19.2.1979 and were appointed would be entitled to the grant of benefits in terms of letter dated 23.7.1957 subject to further conditions. It is thus evident that the benefits in lieu of higher qualification acquired after 19.2.1979 would not be available to the petitioners who have admittedly acquired post graduate qualification much later. The writ petitions are wholly misconceived and are thus liable to be dismissed.

For the reasons afore-mentioned, these writ petitions fails and same are dismissed.

April 29, 2009
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(M.M. KUMAR)
JUDGE